TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 356.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

ADRIAN H. LARKIN, INTERVENOR AND CLAIMANT OF ONE RING SET WITH TWO CABOCHON RUBIES AND SURROUNDED WITH EIGHT SMALL DIAMONDS, ETC.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED JUNE 18, 1907.

(20759.)

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INDEX.

	Original.	Print.
Information	1	1
Monition	5	2
Plea as to jurisdiction	12	6
Exhibit A. Receipt of Collector Leach to Larkin, March 14, 1905	17	9
Exhibit B. List of jewelry	18	9
Demurrer to plea as to jurisdiction	20	9
Order of court overruling demurrer	22	10
Reply to plea as to jurisdiction	23	10
Demurrer to reply as to jurisdiction	29	13
Opinion of court	31	13
Order of court sustaining demurrer to reply to plea as to jurisdiction	33	14
Certificate of judge as to question of jurisdiction	34	15
Petition for writ of error	35	15
Assignment of errors	37	16
Order allowing writ of error	39	17
Writ of error (original)	39½	17
Transcript of docket entries	40	18
Citation (original)	42	19
Precipe for transcript	43	20
Clerk's certificate	45	21

1 In the District Court of the United States, Northern District of Ohio, Eastern Division, of the April Term, in the Year Nineteen Hundred and Five.

NORTHERN DISTRICT OF OHIO,
Eastern Division.

Be it remembered that John J. Sullivan, attorney of the United States of America, for the Northern District of Ohio, who for the said United States in this behalf prosecutes, comes in person into the District Court of the said United States for the district aforesaid, at Cleveland, on this 8th day of June, A. D. 1905, in this same term, and for the said United States gives the court to understand and be informed that on the 19th day of May, in the year 1905, on land at the city of Cleveland aforesaid, in the Northern District of Ohio, aforesaid, and the collection district of Cuyahoga County, Ohio, Charles F. Leach, collector of customs of the United States for said district, did seize certain property—that is to say, one ring set with two cabochon rubies, each surrounded with eight small diamonds, small diamonds in shank; two earrings, each set with about 2 karat diamond and pear-shaped diamond pendants (or briolets); one ring set with diamond in shape of shield or half moon; two empty ring shanks; one ring set with brown diamond, about 7 karats; one two-stone diamond ring, small diamonds in shank; two large diamonds, weigh' about 11 karats; one ring set with single stone, white diamond, about 8¾ karats; one seven-stone pearl ring; one stick pin set with pear-shaped opal; one brooch set with one oval opal surrounded by eight diamonds and small sqr. rubies; one card case set with precious
2 stones; one ring set with "Olivene" diamond, about 4½ karats, and the said collector of customs now holds the same in his custody, within the judicial and collection district aforesaid, as forfeited to the said United States for the causes following, to wit:

For that lately before the said seizure, on the 10th day of June, in the year of our Lord 1902, the said property so seized, being merchandise by law subject to payment of duties to the said United States upon being imported or brought into the said United States, was fraudulently and knowingly imported and brought into the United States at the City and port of New York, in the State of New York, in the said United States, by one Cassie L. Chadwick, and by other persons acting in her behalf, whose names are to the said attorney as yet unknown, contrary to law; that is to say, without entry of the said merchandise being made with any collector of customs of the said United States, and without declaration thereof being made to any proper revenue officer of the said United States, and without payment of or accounting for the said duties for the same; contrary to the form of the statute of the said United States in such case made and provided.

2. And for that the said Cassie L. Chadwick, and other persons acting for her, whose names are to the said attorney as yet unknown,

lately before the time of said seizure, to wit, the tenth day of June, 1902, at the city and port of New York, in the State of New York, within the said United States, the said property so seized as aforesaid, the same then and there being goods and merchandise subject to duty by law, and which should have been invoiced, knowingly and wilfully and with intent to defraud the revenue of the said United States, did smuggle and clandestinely introduce into the said United
3 States without paying or accounting for the said duty on the same; contrary to the form of the statute of the said United States in such case made and provided.

By reason of which premises and by force of the statute of the United States the said property became and is forfeited to the said United States; wherefore the said attorney of the said United States, who prosecutes as aforesaid for the said United States, prays that due process of law may be awarded in this behalf to enforce such forfeiture of the said property so seized as aforesaid, and to give notice to all persons concerned to appear on the return day of such process and show cause, if any they have, why such forfeiture should not be awarded.

JOHN J. SULLIVAN,
United States Attorney.

STATE OF OHIO, *Lucas county, ss.*

Before me, a notary public in and for said county, personally appeared John J. Sullivan, who, being first duly sworn, on oath says he is the United States attorney for the Northern District of Ohio and that the facts stated in the foregoing information are true and correct, as he verily believes.

JOHN J. SULLIVAN.

Sworn to before me and subscribed in my presence this 7th day of June, A. D. 1905.

[NOTARIAL SEAL.] FREDERICK W. GAINES,
Notary Public.

Tax fee, 40c.

4 (Endorsed:) # 95. United States District Court, Northern District of Ohio, Eastern Division. The United States of America, plaintiff, vs. Two Earrings, etc., defendants. Information for forfeiture. In the District Court of the United States in and for the District and division aforesaid. Filed Jun 8, 1905. At o'clock, . m. H. F. Carleton, clerk. John J. Sullivan, U. S. attorney.

5 The President of the United States of America to the marshal of the Northern District of Ohio, greeting:

Whereas an information has been filed in the District Court of the said United States for the said Northern District of Ohio, Eastern Division, on the 8th day of June, 1905, by John J. Sullivan, United States attorney for said district, on behalf of the said United States, against One ring set with two cabochon rubies, each surrounded with eight small diamonds, small diamonds in shank; two earrings, each

set with about 2-karat diamond, and pear-shaped diamond pendants (or briolets); one ring set with diamond in shape of shield or half moon; two empty ring shanks; one ring set with brown diamond, about 7 karats; one two-stone diamond ring, small diamonds in shank; two large diamonds, weigh about 11 karats; one ring set with single stone, white diamond, about 8¾ karats; one seven-stone pearl ring; one stick pin set with pear-shaped opal; one brooch set with one oval opal surrounded by eight diamonds and small sqr. rubies; one cardcase set precious stones; one ring set with "Olivene" diamond about 4½ k.; for reasons and causes in the said information mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons having or pretending to have any right, title, or interest therein may be cited to appear and answer all and singular the matters in the said information set forth, and that this court would be pleased to pronounce for the forfeiture and condemnation of the said one ring set with two cabochon rubies, each surrounded with eight small diamonds; small diamonds in shank; two earrings, each set with about 2-karat diamond, and pear-shaped diamond pendants (or briolets); one
6 ring set with diamond in shape of shield or half-moon; two empty ring shanks; one ring set with brown diamond, about 7 karats; one two-stone diamond ring, small diamonds in shank; two large diamonds, weight about 11 karats; one ring set with single stone, white diamond, about 8¾ karats; one seven-stone pearl ring; one stick pin set with pear-shaped opal; one brooch set with one oval opal, surrounded by eight diamonds and small sqr. rubies; one cardcase set precious stones; one ring set with "Olivene" diamond about 4½ k.

You are therefore commanded to attach the said property, in the custody of Charles F. Leach, collector of customs for the port of Cleveland and district of Ohio, to notify the said collector that he detain the same in his custody until the further order of this court respecting same, and to give notice by publication fourteen days previous to the day of trial, and by notice posted in the most public manner for the space of fourteen days at or near the place of trial of the said seizure or information to all persons claiming the said property or knowing or having anything to say why this court should not pronounce against the same, according to the prayer of the said information, and that they appear before the said court to be holden in and for the said Northern District of Ohio, at the United States court-house in the city of Cleveland, in the said district and division aforesaid, on Saturday, the 8th day of July, 1905, at 10 o'clock a. m., then and there to interpose a claim for the same, and to make their allegations in that behalf.

And of what you shall have done in the premises, do you then and there make return, together with this writ.

Witness, the honorable Robert W. Tayler, judge of the said
7 court, and the seal thereof, this 8th day of June, in the year of

our Lord one thousand nine hundred and five, and in the 129th year of the independence of the United States of America.

H. F. CARLETON, *Clerk.*
[OFFICIAL SEAL.] By F. J. DENZLER, *Deputy Clerk.*

U. S. marshal's return.

THE UNITED STATES OF AMERICA,
Northern District of Ohio, ss:

Received this writ at Cleveland, Ohio, June 8, 1905, and on the same day at Cleveland Ohio, I served a true and certified copy hereof with all the endorsements thereon on the within named Charles F. Leach, collector of customs for the port of Cleveland and district of Ohio, and at the same time attached the within described property now in his custody, and at the same time I posted a notice in the United States court-house in Cleveland, Ohio, and also caused a notice of said seizure to be published in the "Cleveland Leader," in accordance with the provisions of this writ, a copy of said publication being hereto attached and made a part of this return.

F. M. CHANDLER, *U. S. Marshal.*
By F. M. FANNING, *Deputy.*

Fees:

Service,	$2.00
Travel,	.06
	$2.06

8 *Legal notice.*

U. S. District Court, Northern District of Ohio, Eastern Division.

THE UNITED STATES
vs.
1 RING SET WITH 2 CABOCHON RUBIES, EACH SURROUNDED WITH 8 small diamonds, small diamonds in shank; 2 earrings, each set with about 2-karat diamond and pear-shaped diamond pendants (or briolets); 1 ring set with diamond in shape of shield or half moon; 2 empty ring shanks; 1 ring set with brown diamond about 7 karats; 1 two-stone diamond ring, small diamonds in shank; 2 large diamonds, weigh about 11 karats; 1 ring set with single stone, white diamond, about 8¾ karats; one seven-stone pearl ring; 1 stick pin set with pear-shaped opal; 1 brooch set with 1 oval opal surrounded by 8 diamonds and small sqr. rubies; 1 cardcase set with precious stones; 1 ring set with "Olivene" diamond, about 4½ k. } No. 95.

Whereas an information has been filed in said court on behalf of the said United States *vs.* 1 ring set with 2 cabochon rubies, each surrounded with 8 small diamonds, small diamonds in shank; 2 earrings, each set with about 2-karat diamond and pear-shaped diamond

pendant (or briolets); 1 ring set with diamond in shape of shield or half moon; 2 empty ring shanks; 1 ring set with brown diamond about 7 karats; 1 two-stone diamond ring, small diamonds in shank; 2 large diamonds, weigh about 11 karats; 1 ring set with single stone, white diamond, about 8¾ karats; 1 seven-stone pearl ring; 1 stick pin set with pear-shaped opal; 1 brooch set with one oval opal surrounded by 8 diamonds and small sqr. rubies; 1 cardcase set with precious stones; 1 ring set with "Olivene" diamond, about 4½k., for reasons and causes in said information; and

9 Whereas, by virtue of a certain warrant of attachment and seizure, I have seized and now detain said property in the custody of the collector of customs for the port of Cleveland and district of Ohio:

Now, therefore, in further pursuance of said writ, I do hereby give notice to all persons having or pretending to have any right, title, or interest therein, or knowing or having anything to say why this court shall not pronounce for the forfeiture and condemnation of the said 1 ring set with cabochon rubies, each surrounded with 8 small diamonds, small diamonds in shank; 2 earrings, each set with about 2-karat diamond and pear-shaped diamond pendants (or briolets); 1 ring set with diamond in shape of shield or half moon; 2 empty ring shanks; 1 ring set with brown diamond, about 7 karats; 1 two-stone diamond ring, small diamond in shank; 2 large diamonds, weigh about 11 karats; 1 ring set with single stone, white diamond, about 8¾ karats; 1 seven-stone pearl ring; 1 stick pin set with pear-shaped opal; 1 brooch, set with 1 oval opal surrounded by 8 diamonds and small sqr. rubies; 1 cardcase set with precious stones; one ring set with "Olivene" diamond, about 4½ karats, according to the prayer of the said information, and that they appear before the said court, to be holden in and for the said northern district of Ohio at the United States court-house in the city of Cleveland, in said district and division aforesaid, on Saturday, July 8, A. D. 1905, at 10 o'clock a. m., then and there to interpose a claim to the same and make allegation in that behalf.

F. M. CHANDLER, *U. S. Marshal.*
By F. M. FANNING, *Deputy.*

J. J. SULLIVAN, *U. S. District Attorney.*

10 THE STATE OF OHIO, *Cuyahoga County, ss:*

W. H. L'uer, being duly sworn, says that he is clerk for the publishers of the Cleveland Daily Leader, a public newspaper, printed, published, and of general circulation in said county; and that the notice #95 hereto attached was published in said newspaper one time on the 9th day of June, 1905.

W. H. LEUER.

Sworn to by said W. H. L'uer before me and signed by him in my presence this 15th day of June, 1905.

[NOTARIAL SEAL.]

ROBERT F. SCHADE,
Notary Public for said County.

(Endorsed:) 95. United States District Court, Northern District of Ohio, Eastern Division. The United States vs. One Ring Set With Two Rubies, etc. Filed Jun' 16, 1905. At o'clock m. H. F. Carleton, clerk.

11 (Endorsed:) U. S. marshal's No. 2235. No. 95. United States District Court, Northern District of Ohio, Eastern Division. The United States vs. 1 Ring set with two cabochon rubies, each surrounded with eight small diamonds, etc. Monition.

Filed Jun' 14, 1905. At o'clock m. H. F. Carleton, clerk.

12 In the District Court of the United States, Northern District of Ohio, Eastern Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* ONE (1) RING SET WITH TWO CABOCHON rubies, each surrounded with 8 small diamonds, two earrings, etc., defendant.	No. 95.

To the Honorable R. W. TAYLER,
Judge of the District Court of the United States for the Northern District of Ohio, Eastern Division:

Adrian H. Larkin, esquire, being interested in and having a claim upon the property described in the information herein filed by John J. Sullivan, United States district attorney, on June 8th, 1905, as will more fully hereafter be made to appear, specially appearing herein under protest for the purpose of this plea, and for no other purpose, until the question herein raised is decided, by protestation, not confessing or acknowledging all or any part of the matters or things in said information set forth and alleged, says that this court is without jurisdiction of the subject-matter of this action and ought not to take cognizance of or sustain this action for the reasons following, to wit:

First. Some time prior to the 14th day of March, 1905, one J. W. Friend, who then and for a long time theretofore had had in his possession and control, in the city of New York, State of New
13 York, certain precious stones and jewelry, all of which had been pledged and hypothecated with him as collateral security for money loaned by him to one Cassie L. Chadwick, learning that the Secretary of the Treasury of the United States, or certain officials thereof, were making claim that said Cassie L. Chadwick had brought into the United States, through the port of New York, from certain foreign countries, a large amount of jewelry and precious stones without the payment of lawful duty, visited the said Secretary of the Treasury, at his office in Washington, D. C., and informed said Secretary that he had said property in New York City, and made full

disclosure to him of the property and the circumstances under which it had come into his, said Friend's, possession, and agreed with an promised said Secretary that said property would be kept in the city of New York, open to the inspection and examination of the Treasury Department, or any official of such Department.

Second. Immediately after said visit, and prior to March 14th, 1905, said Friend, being about to absent himself from the city of New York, placed said jewelry and precious stones in the custody and possession of Adrian H. Larkin, protestant herein, as attorney and baillee of said J. W. Friend, with full power and authority to carry on and conduct any business necessary to be conducted with the said Treasury Department at Washington in relation to said property, for the purpose of ascertaining whether said property, or any part thereof, was in truth wrongfully imported into the United States. Said Larkin was and is a resident of the State of New Jersey and had then and still has his office in the city of New York, State of New York, and had and kept said property at his said office until it was wrongfully removed, as hereinafter set forth.

Third. On the 14th day of March, 1905, at about 10 o'clock
14 a. m., the Charles F. Leach mentioned in the information filed herein, pretending and professing to represent the Secretary of the Treasury of the United States, came to the office of said Larkin in the city of New York and asked permission to see said property in the possession of said Larkin, who thereupon freely and openly exhibited the same to said Leach. After examination thereof by said Leach, he informed said Larkin that certain of said jewelry had not been wrongfully imported and that he did not care to make further examination thereof, but that certain of said pieces he was in doubt about and would like to exhibit them to a person, located in New York City, who was expert in such matters, for his opinion, and asked permission to take said jewelry away from the office of said Larkin for that purpose, he promising and agreeing to return said property to said Larkin at his office in New York City on the afternoon of that same day. Thereupon said Larkin, relying upon said promise and agreement of said Leach, delivered said property into his possession and custody, receiving from said Leach a receipt therefor in writing, a true copy of which is hereto attached marked Exhibit A and made a part hereof.

Fourth. Said Leach, in violation of his promise and agreement hereinbefore set forth, and without the authority or permission of said Larkin or said Friend, after the receipt by him of said property, and on said March 14, 1905, proceeded to and did, in said city of New York, appropriate said property in said Exhibit A described, and in further violation of his promise and agreement shipped and expressed the same to himself in the city of Cleveland, Ohio. Subsequently said Leach returned to said Larkin, in the city of New York, certain pieces of said jewelry in said Exhibit A described, to wit, those shown in Exhibit B hereto attached and made a part hereof, but said Leach

has kept and retained and still has in his possession in the
15 city of Cleveland, Ohio, the balance of said jewels and precious stones, shown in Exhibit A, and has kept and retained the same ever since said March 14, 1905, and although often requested to return the same to said Larkin in the city of New York, or to the collector of the port of New York, said Leach has refused and still refuses so to do. The property received and shipped to Cleveland and retained by said Leach is that described in said information.

Fifth. During all the time mentioned herein said Leach was the collector of customs for the collection district of Cuyahoga County, Ohio.

Sixth. Either the acts performed and done by said Leach in the city of New York amounted to a seizure of said property, in which event not this court but the proper court of the collection district for the city of New York has jurisdiction hereof, or, if the acts of said Leach did not amount to a seizure then your protestant avers and says that said property was not found by the collector within the collection district of Cuyahoga County, Ohio, nor voluntarily brought to such district, but was wrongfully and fraudulently removed from the district of New York by the said collector Leach and by him brought into the county of Cuyahoga, in order that a pretended seizure thereof might be made in this district, and forfeiture proceedings prosecuted here instead of in the collection district of the city of New York, where said property was located, and where, if at all, it was subject to seizure and proceedings for forfeiture, and the jurisdiction of the court herein over this matter was acquired solely through and is dependent upon the fraudulent acts and practises of said Leach, collector, as hereinbefore set forth.

16 Wherefore your protestant, insisting that this court is without jurisdiction, prays the judgment of this court whether further answer or plea should be made herein, and whether this proceeding should not be quashed and the information herein filed dismissed.

ADRIAN H. LARKIN,
By HOYT, DUSTIN & KELLEY, *Solicitors.*

WASHINGTON,
District of Columbia, ss.

Adrian H. Larkin makes solemn oath and says that he is the above-named protestant and claimant and that the foregoing plea is true in fact and is not interposed herein for delay.

ADRIAN H. LARKIN.

Sworn and subscribed to before me this 5th day of July, A. D. 1905.

[NOTARIAL SEAL.] E. C. OWEN, *Notary Public.*

I hereby certify that, in my opinion, the foregoing plea is well founded in point of law.

A. C. DUSTIN,
Counsel for Adrian H. Larkin, Protestant.

17 EXHIBIT A.

NEW YORK, *March 14, 1905.*

Received of A. H. Larkin, attorney for J. W. Friend, the following pieces of jewelry for examination and identification:

1 marquise (single stone) diamond ring.
1 ruby and diamond ring.
1 diamond ring about three karats—off color diamond.
1 ring set with two cabochon rubies and sixteen diamonds.
2 earrings set with two-karat diamond and small pear-shaped diamond pendants.
1 marquise (canary) diamond ring.
1 ring set with diamond in shape of shield.
2 empty settings.
1 ring set with six-karat yellow diamond.
1 ring set with two five-karat diamonds, twelve diamonds in shank.
1 six-carat diamond (white) ring.
1 seven-stone pearl ring.
2 opal stick pins.
1 chatelaine watch.
1 brooch (one oval opal) surrounded by eight diamonds and small sgr rubies.
1 cardcase set with jewels.

(Sgd.) CHAS. F. LEACH,
Collector of Customs.

18 EXHIBIT B.

1 stick pin set with round opal.
1 ring set with 1 ruby and two pear-shaped diamonds.
1 ring set with 1 single stone, marquise shaped diamond.
1 ring set with single stone, marquise canary diamond.

19 (Endorsement:) #95. United States District Court, Northern District of Ohio, Eastern Division. United States of America vs. Two Earrings, etc. Plea as to jurisdiction. Filed July 7th, 1905. H. F. Carleton, clerk. Hoyt, Dustin & Kelley, solicitors.

20 In the United States District Court, Northern District of Ohio, Eastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* ONE RING SET WITH TWO CABOOCHAN RUBIES, each surrounded with eight small diamonds; two earrings, etc.	No. 95. Demurrer to plea as to jurisdiction.

Now comes John J. Sullivan, United States attorney for the Northern District of Ohio, for and in behalf of the United States, and

demurs to the plea as to jurisdiction in the above-entitled cause, and says that the facts therein contained do not constitute sufficient cause to sustain the plea to the jurisdiction.

JOHN J. SULLIVAN,
United States Attorney for Northern District of Ohio.

21 (Endorsed:) No. 95. In the United States District Court, Northern District of Ohio, Eastern Division. The United States of America, plaintiff, vs. One ring, set with two caboochan rubies, each surrounded with eight small diamonds; two earrings, etc. Demurrer to plea as to jurisdiction. Filed Oct. 3, 1905. At o'clock m. H. F. Carleton, clerk. John J. Sullivan, U. S. attorney.

22 October term, A. D. 1905.

FRIDAY, *December 29th, A. D. 1905.*

Present: The Honorable Judge Tayler, district judge.

THE UNITED STATES OF AMERICA
vs.
ONE RING, SET WITH 2 CABOCHON rubies, etc. } No. 95. Forfeiture.

This cause came on to be heard upon the demurrer to the plea to the jurisdiction, and the court upon consideration thereof overrules the same, to which the United States then and there excepted, and upon application therefore leave is granted the United States to plead by the 15th day of January, A. D. 1906, and said cause is hereby continued.

Journal 27–21.

23 In the United States District Court, Northern District of Ohio, Eastern Division.

THE UNITED STATES
vs.
ONE RING, SET WITH 2 CABOCHAN rubies and surrounded with 8 small diamonds, etc. } No. 95. Reply to the plea to the jurisdiction.

Now comes the plaintiff, and for reply to the plea to the jurisdiction herein filed says that prior to the 14th of March, 1905, one Cassie L. Chadwick, being the Cassie L. Chadwick mentioned in the information in forfeiture, and in the plea to the jurisdiction herein filed, did unlawfully bring into the United States—that is, did smuggle into the United States—a large quantity of jewelry and other merchandise, including that named in the information herein filed, and that prior to the 14th of March, 1905, the articles of jewelry and merchandise named, together with sundry other articles of jewelry and merchandise, had been placed by the said Cassie L. Chad-

wick and one J. W. Friend, being the J. W. Friend mentioned in the plea to the jurisdiction herein filed, and who was then and is a resident of Pittsburg, Pennsylvania, as collateral security for a loan of money; that prior to the 14th of March, 1905, Charles F. Leach, collector of customs, being the Charles F. Leach mentioned in the information and plea herein filed, received information as said collector of customs that certain articles of jewelry and merchandise had been unlawfully imported, and that the said articles of jewelry and merchandise, including those mentioned in the information herein filed, were in the city of Cleveland, Ohio, and upon receiving said information, said Charles F. Leach, collector as aforesaid,
24 began search for said property, including the articles of jewelry and merchandise mentioned in the information herein filed.

Plaintiff further says that prior to the 14th of March, 1905, said J. W. Friend did himself, and through his agents, remove and cause to be removed from the city of Cleveland to other parts of the United States, and ultimately to the city of New York, the said articles of jewelry and merchandise. That prior to the 14th of March, 1905, the said J. W. Friend, learning that the said collector of customs, Charles F. Leach, was searching for said jewels and property, did go to the Secretary of the Treasury of the United States and disclose to him, the said Secretary of the Treasury, the fact that he had said jewels and merchandise in his custody as collateral security for a loan, as aforesaid, and that the said jewels and articles of merchandise were then in the temporary custody of one F. N. Hoffstot, as bailee for said J. W. Friend, in the city of New York. That thereupon the said Secretary of the Treasury summoned the said Charles F. Leach, collector of cutsoms, as aforesaid, to the city of Washington, where the said Charles F. Leach met the said J. W. Friend; that then and there the said J. W. Friend informed the said Charles F. Leach, collector as aforesaid, that the said articles of jewelry and merchandise, including those mentioned in the information herein filed, were in New York, in the custody of the said F. N. Hoffstot, and that the said collector could get the said articles of jewelry and merchandise in New York and ascertain which of the said articles of merchandise and jewelry were unlawfully imported, and that if necessary for ascertaining whether or not certain of said articles of jewelry and merchandise had been unlawfully imported and were subject to seizure, that they be taken to Cleveland, Ohio, or
25 wherever the said Charles F. Leach, collector as aforesaid, would deem it necessary to take them in order to examine into the question whether or not they were unlawfully imported; that the said J. W. Friend furthermore stated that he was willing and desirous to pay the duty on such of the said articles of jewelry and merchandise as had been unlawfully imported into the United States.

Plaintiff further says that on the 14th day of March, 1905, the said Charles F. Leach, collector as aforesaid, did go to the city of New York and was there shown the said articles of jewelry and

merchandise, including those named in the information herein filed by the said F. N. Hoffstot, in the office of Adrian H. Larkin, being the Adrian H. Larkin named in the plea to the jurisdiction herein filed; that after an examination of the jewelry aforementioned the said collector informed the said Adrian H. Larkin that he was in doubt as to which specific articles of jewelry and merchandise were unlawfully imported, and that it would be necessary for him to take such articles as to which he was in doubt and further examine them as to whether or not they had been unlawfully imported; and thereupon the said Charles F. Leach received into his care certain of the said articles of jewelry and merchandise and gave to the said Adrian H. Larkin a receipt for the same, a copy of which is set forth in the plea to the jurisdiction herein filed.

Plaintiff further says that it denies that the said Charles F. Leach, collector as aforesaid, promised to the said Adrian H. Larkin that he would immediately return the said articles of jewelry and merchandise which he thus received into his care, and plaintiff further denies that he took said jewelry into his care merely to submit it to an expert in New York for valuation, or that he said to said
26 Larkin or any other person that such was his purpose and intention. But plaintiff says that only in the city of Cleveland, Ohio, could the said collector of customs, Charles F. Leach, ascertain which of the said articles were unlawfully imported, and that, with the consent of the said J. W. Friend, the said Charles F. Leach brought the said articles of jewelry and merchandise to Cleveland, and that he there made a careful investigation and ascertained that certain of the said articles of jewelry and merchandise which he had thus brought from New York were not unlawfully imported, and these articles of jewelry and merchandise he forthwith returned to the said A. H. Larkin at New York; the remaining articles of jewelry and merchandise—that is to say, those mentioned in the information herein filed—he ascertained were unlawfullly imported, and thereupon—that is to say, on the 19th day of May, 1905, in Cleveland, Ohio—he did seize the said articles of jewelry and merchandise mentioned in the said information, and did claim title in the same for the plaintiff, the said United States.

Wherefore said plaintiff prays, as in the information herein filed, that due process of law may be awarded in this behalf to enforce such forfeiture of the said property so seized as aforesaid.

JOHN J. SULLIVAN,
United States Attorney, Northern District of Ohio.

27 STATE OF OHIO, *Cuyahoga County, ss:*

Before me, a notary public in and for said county and State, personally appeared Samuel P. Orth, who being first duly sworn, on oath says he is an assistant United States attorney for the northern district of Ohio, and that the facts stated in the foregoing reply to the plea to the jurisdiction are true and correct, as he verily believes.

SAMUEL P. ORTH.

Sworn to before me and subscribed in my presence this 15th day of January, A. D. 1906.

[NOTARIAL SEAL.] EDWIN DRAKE,
Notary Public, Cuyahoga County, Ohio.

Tax fee, 40 ¢.

28 (Endorsed:) No. 95. In the United States District Court, Northern District of Ohio, Eastern Division. (In forfeiture.) The United States v. One ring set with 2 Cabochan rubies and surrounded with 8 small diamonds, etc. Reply to the plea to the jurisdiction. Filed Jan. 15, 1906. At o'clock, m. H. F. Carleton, clerk. John J. Sullivan, U. S. Attorney.

29 In the United States District Court, Northern District of Ohio, Eastern Division.

THE UNITED STATES *vs.* ONE RING SET WITH 2 CABOCHAN RUBIES and surrounded with 8 small diamonds, etc.	No. 95. Demurrer to reply.

Adrian H. Larkin, intervenor herein, now comes and demurs to the reply filed on January 15, 1906, to his plea to the jurisdiction of this court, and for cause of demurrer says:

That the facts stated in said so-called reply do not constitute a defence to the plea to the jurisdiction herein filed.

ADRIAN H. LARKIN,
By HOYT, DUSTIN & KELLEY,
His Attorneys.

30 (Endorsement:) # 95. United States District Court, Northern District of Ohio, Eastern Division. The United States vs. One ring set with 2 Cabochon rubies and surrounded with 8 small diamonds, etc. Demurrer to reply. Filed January 18, 1906. At o'clock . m. H. F. Carleton, clerk. Oral argument is hereby waived. Hoyt, Dustin & Kelley. John J. Sullivan, U. S. atty.

31 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* TWO EARRINGS, ETC., DEFENDANTS.	95. Forfeiture.

Opinion of the Court.

TAYLER, J.:

This case comes up now on a demurrer to the reply of the Government to the plea to the jurisdiction.

An examination of the reply discloses practically the same question as that which was heretofore presented on the demurrer to the plea.

Considering the circumstances under which the collector of customs obtained possession of the articles of jewelry which are the subject of this action, as shown by the statement of facts, and especially by the receipt which the collector gave for them, it is quite apparent that no seizure of them could be made in this district.

The reasoning by which I came to the conclusion that the demurrer to the plea should be overruled compels me to conclude that this demurrer to the reply should be sustained.

May 11, 1906. R. W. TAYLER.

32 (Endorsement.) #95. United States District Court, Northern District of Ohio, Eastern Division. The United States of America, plaintiff, vs. Two Earrings, etc., defendants. Opinion of the Court. On demurrer to reply to plea to jurisdiction. Filed May 11, 1906, at o'clock m. H. F. Carleton, Clerk.

33 April Term, A. D. 1906.

TUESDAY, *May 22nd, A. D. 1906.*

Present, the honorable Robert W. Tayler, district judge, and the honorable A. M. J. Cochran, sitting by designation.

THE UNITED STATES, PLAINTIFF,
vs.
ONE RING SET WITH TWO CABOCHAN RUBIES, EACH SURROUNDED with Eight Small Diamonds, etc., defendant. } No. 95.

In this cause the demurrer of Adrian H. Larkin, intervenor herein, to the reply filed on January 15, 1906, to the plea of said Larkin to the jurisdiction of this court, came duly on for hearing, and was argued by counsel for the respective parties; and the premises being seen and fully understood, it is ordered by the court that said demurrer be, and the same hereby is, sustained; to which action of the court the United States, by John J. Sullivan, United States attorney, at the time, duly excepted.

And the United States waiving in open court the right to further amend its said reply, and declining to plead further in said action, it is thereupon further ordered by the court that the information for forfeiture herein filed on the 8th day of June, A. D. 1905, and this cause be, and the same hereby are, dismissed. To all of which the said United States, through its said attorney at the time, duly excepted.

Journal, 27–157.

34 United States District Court, Northern District of Ohio, Eastern Division.

In forfeiture.

THE UNITED STATES, PLAINTIFF, vs. ONE RING SET WITH TWO CABOCHON RUBIES AND surrounded with 8 small diamonds, etc., defendant. Adrian H. Larkin, intervenor and claimant.	No. 95. Certificate.

In this cause I hereby certify that the judgment and decree herein was based solely on the ground that the District Court of the United States for the Northern District of Ohio, on the facts as they appear by the record, had no jurisdiction in the premises.

R. W. TAYLER,
Judge United States District Court,
Northern District of Ohio.

May 21, 1907.

(Indorsed:) No. 95. United States District Court, Northern District of Ohio, Eastern Division. The United States, plaintiff, vs. One ring set with two Cabochon rubies and surrounded with 8 small diamonds, etc., defendant. Certificate of judge as to jurisdiction. In forfeiture. Filed May 21, 1907, at o'clock m. H. F. Carleton, clerk.

35 In the United States District Court, Northern District of Ohio, Eastern Division.

In forfeiture.

THE UNITED STATES, PLAINTIFF, *vs.* ONE RING SET WITH TWO CABOCHON rubies and surrounded with 8 small diamonds, etc., defendant. Adrian H. Larkin, intervenor and claimant.	No. 95. Petition for writ of error to the Supreme Court.

And now comes the United States, plaintiff herein, and says:

That on or about the 22nd day of May, 1906, the said District Court entered a judgment herein in favor of Adrian H. Larkin, intervenor and claimant herein and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition; said errors relate to the jurisdiction of this court only.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of and to operate as a supersedeas, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio, Attorney for Plaintiff.

May 21, 1907.

36 The foregoing writ of error is allowed.

R. W. TAYLER,
United States District Judge for the Northern District of Ohio.

May 21, 1907.

(Endorsed:) No. 95. In the United States District Court, Northern District of Ohio, Eastern Division. The United States, plaintiff, *vs.* One ring set with two cabochon rubies and surrounded with 8 small diamonds, etc., defendant. Adrian H. Larkin, intervenor and claimant. Petition for writ of error to the Supreme Court. Filed May 21, 1907, at o'clock m. H. F. Carleton, clerk. John J. Sullivan, United States attorney for the Northern District of Ohio, attorney for plaintiff.

37 In the United States District Court, Northern District of Ohio, Eastern Division.

In forfeiture.

THE UNITED STATES, PLAINTIFF, *vs.* ONE RING SET WITH TWO CABOCHON rubies and surrounded with 8 small diamonds, etc., defendant. Adrian H. Larkin, intervenor and claimant.	No. 95.	Assignment of errors.

The plaintiff prays for a writ of error from the final decree and judgment of this court to the Supreme Court of the United States and assigns for error:

The court erred in sustaining the demurrer of Adrian H. Larkin, intervenor and claimant in said case, to the reply filed on January 15th, 1906, to the plea of the said Adrian H. Larkin to the jurisdiction of this court, to which ruling of the court the United States then and there duly excepted; and the court further erred in holding that the said District Court had no jurisdiction of the subject matter of said action, to which ruling the United States then and

there duly excepted; and for other errors relating to the jurisdiction of the court and apparent upon the face of the record.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

38 (Endorsed:) No. 95. United States District Court, Northern District of Ohio, Eastern Division. The United States, plaintiff, *vs.* One ring set with two cabochon rubies and surrounded with 8 small diamonds, etc., defendant. Assignment of errors. In forfeiture. Filed May 21, 1907, at o'clock m. H. F. Carleton, clerk.

39 April term, A. D. 1907.

WEDNESDAY, *May 22nd, A. D. 1907.*

Present, the Honorable Robert W. Tayler, district judge.

THE UNITED STATES, PLAINTIFF, *vs.* ONE RING SET WITH TWO CABOCHON RUBIES AND surrounded with 8 small diamonds, etc., defendant. Adrian H. Larkin, intervenor and claimant.	No. 95. Forfeiture.

This 21st day of May, 1907, comes the plaintiff by his attorney and files herein and presents to the court his petition praying for the allowance of a writ of error, and an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof the court does allow the writ of error, which shall operate as a supersedeas, and certifies that the only question in said cause is one of jurisdiction of this court.

Journal 27–54.

39½ UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judge of the United States District Court, Northern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff in error, and One ring set with two cabochon rubies and surrounded with eight small diamonds, etc., defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by its complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to

the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within days from the date hereof; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of May, in the year of our Lord one thousand nine hundred and seven.

H. F. CARLETON,
Clerk of the District Court of the United States
for the Northern District of Ohio.

Allowed by:

R. W. TAYLER,
Judge of the U. S. District Court,
Northern District of Ohio.

40 Parties: The United States vs. One ring set with two cabochon rubies, each surrounded with 8 small diamonds, etc.
John J. Sullivan. Forfeiture. Hoyt, D. & K.
U. S. Attorney: John J. Sullivan.
Claimant's attorney: Hoyt, Dustin & Kelley.

Date.	*Proceedings.*
1905.	
June 8.	Information filed.
" "	Monition issued (returnable July 8th, 1905).
" 14.	Monition returned (served) and filed.
" 16.	Proof of publication filed.
July 7.	Plea of Adrian H. Larkin as to jurisdiction filed.
Oct. 2.	Continued.
" 3.	Demurrer to plea as to jurisdiction filed.
Dec. 29.	Demurrer to plea of jurisdiction heard and overruled, Exceptions by U. S. and leave granted U. S. to plead by January 15, 1906.
1906.	
Jan. 15.	Reply to plea of jurisdiction filed.
" 18.	Demurrer to reply with brief attached.
Feb. 5.	Continued.
Mar. 14.	Brief of plt'f filed.
" 16.	Brief for protestant in reply to plaintiff's brief filed.
" 30.	Continued.
May 11.	Opinion of court on demurrer to reply filed (demurrer sustained).
" 22.	Decree entered, information dismissed, exceptions by plff.
" 22.	Original draft of decree filed.

1906.
July 19. Petition for appeal to U. S. C. C. of A. filed.
" " Assignment of errors filed.
" " Order allowing appeal entered.
" " Original order of court filed.
July 19. Citation issued.
41 July 19. Precipe for transcript on appeal filed.
20. Citation returned (service accepted) and filed.
Aug. 7. Transcript on appeal to U. S. Circuit Court of Appeals, Sixth Circuit.

1907.
May 7. Mandate from U. S. Circuit Court of Appeals confirming decision of U. S. District Court filed and entered.
" 7. Opinion of court filed.
" " Application of Adrian H. Larkin, claimant, for order to deliver attached property filed.
" 9. Application of A. H. Larkin heard and taken under advisement.
" 21. Petition for writ of error to U. S. Supreme Court filed.
" " Assignment of errors filed.
" " Order allowing writ of error entered.
" " Filing original order of court.
" " Certificate of jurisdictional questions filed.
" " Citation issued.
" " Citation returned (service of copy admitted) and filed.
" " Precipe for transcript on writ of error filed.

42 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Adrian H. Larkin, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, within thirty days from the date of this writ, pursuant to a writ of error duly allowed by the District Court of the United States for the Northern District of Ohio, and filed in the clerk's office of the eastern division of said court on the 21st day of May, A. D. 1907, in a cause wherein the United States is plaintiff in error and you are defendant in error, to show cause, if any, why the decree rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert W. Taylor, United States district judge for the Northern District of Ohio, this 21st day of May, A. D. 1907.

R. W. TAYLOR,
United States District Judge, Northern District of Ohio.

Service of a copy of the within citation is hereby admitted this 21st day of May, A. D. 1907.

HOYT, DUSTIN & KELLEY,
Attorneys for Adrian H. Larkin, Defendant in Error.

(Endorsed:) No. 95. United States District Court, Northern District of Ohio, Eastern Division. The United States, plaintiff, *vs.* One (1) Ring Set with Two Cabochon Rubies and Surrounded with 8 Small Diamonds, etc. Citation. Filed May 21, 1907, at —— o'clock — m. H. F. Carleton, clerk.

43 In the United States District Court, Northern District of Ohio, Eastern Division.

In forfeiture.

THE UNITED STATES, PLAINTIFF,
vs.
ONE RING SET WITH TWO CABOCHON RUBIES AND Surrounded with 8 Small Diamonds, etc., defendant; Adrian H. Larkin, intervenor and claimant. | No. 95. Precipe.

To the CLERK:

Please make a transcript of the following papers, to be filed in the Supreme court of the United States, pursuant to a writ of error allowed in the above-entitled cause, to wit:

(1) Information.
(2) Monition.
(3) Plea as to jurisdiction.
(4) Demurrer to plea as to jurisdiction.
(5) Order of court overruling demurrer as to jurisdiction.
(6) Reply to plea as to jurisdiction.
(7) Demurrer to reply as to jurisdiction.
(8) Oponion of court and order of court sustaining demurrer to reply to plea as to jurisdiction.
(9) ertificate of judge.
(10) Petition for writ of error to the Supreme Court.
(11) Assignment of errors to the Supreme Court.
(12) Order allowing writ of error.
(13) Transcript of docket entries.
(14) Citation.
44 (15) Precipe for transcript.
(16) Clerk's certificate.

JOHN J. SULLIVAN,
United States Attorney for the Northern District of Ohio,
Attorney for Plaintiff.

May 21, 1907.

(Endorsed:) In the United States District Court, Northern District of Ohio, Eastern Division. No. 95. In forfeiture. The United States, plaintiff, vs. One ring set with two carbochon rubies and surrounded with 8 small diamonds, etc., defendant. Precipe. Filed May 21, 1907, at o'clock m. H. F. Carleton, clerk. John J. Sullivan, United States attorney for the Northern District of Ohio, attorney for plaintiff.

45 In the District Court of the United States for the Northern District of Ohio, Eastern Division.

THE UNITED STATES *vs.* ONE RING SET WITH TWO CABOCHON rubies and surrounded with eight small diamonds, etc.	No. 95. Clerk's certificate.

I, H. F. Carleton, clerk of the United States District Court, within and for the division and district aforesaid, do hereby certify that the attached and foregoing pages contain a full and true copy of the petition for writ of error, order allowing same, assignment of errors, and all other papers filed and proceedings had, as specified in the precipe filed herein, a copy of which is hereto attached and made a part of this transcript; that I have compared same with the originals, and they are true and correct transcripts therefrom and of the whole thereof.

I further certify that there is also transmitted with the foregoing the original writ of error, certificate of the judge, and citation issued and allowed in the above entitled cause.

Witness my official signature and the seal of said court, at Cleveland, in said district, this 31st day of May, A. D. 1907, and in the 131st year of the Independence of the United States of America.

[SEAL.]

H. F. CARLETON,
Clerk U. S. District Court.

46 (Indorsement on cover:) File No. 20759, N. Ohio, D. C. U. S. Term No. 356. The United States, plaintiff in error, vs. Adrian H. Larkin, intervenor and claimant of One ring set with two cabochon rubies and surrounded with eight small diamonds, &c. Filed June 13, 1907. File No. 20759.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES, PLAINTIFF in error,
v.
ADRIAN H. LARKIN, INTERVENOR, complainant, etc., defendant in error.
No. 356.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance the above-entitled cause for hearing at an early day convenient to the court.

The writ of error in this case was taken by the Government direct from this court to the District Court for the Northern District of Ohio, to review a judgment of that court dismissing for want of jurisdiction an information to enforce the forfeiture of certain jewelry alleged to have been smuggled into the United States.

17267—07

The information averred that the jewelry in question had been fraudulently imported into the United States at the port of New York by one Cassie L. Chadwick and had been seized in the Northern District of Ohio by the collector of customs therein.

The defendant in error entered a special appearance in the cause, and, as claimant of the jewelry, filed a plea to the jurisdiction of the court. The Government filed a demurrer to this plea, which was overruled.

Thereupon the Government filed a reply to the intervenor's plea to the jurisdiction, to which the intervenor demurred. On May 22, 1906, a judgment was entered sustaining this demurrer to the Government's reply, and dismissing the information for forfeiture.

The present writ of error, which was allowed by the District Court on May 21, 1907—after an intermediate appeal had been taken to the Circuit Court of Appeals for the Sixth Circuit—was brought to review the final judgment of the District Court dismissing the information for want of jurisdiction.

The defendant in error moved to dismiss the writ of error for want of jurisdiction, on the grounds that there was not a proper certificate of the question of jurisdiction in the court below, and that the jurisdiction of the court below was not in issue within the meaning of section 5 of the Judiciary Act of 1891; and, alternately, to affirm the judgment below.

By order of the court the consideration of this motion to dismiss or affirm has been postponed to the hearing on the merits.

This motion to advance is submitted for the reasons: first, that it is a revenue case in which the United States is concerned; second, that it involves matters of general public interest relating both to the jurisdiction of the District Court in forfeiture cases and to the jurisdiction of this court under section 5 of the Judiciary Act; and, hence, upon each of these grounds, is a case for the advancement of which provision is made by section 5 of rule 26 of this court.

Furthermore, counsel for defendant in error concur in desiring an advancement of the hearing.

Respectfully,

HENRY M. HOYT,
Solicitor-General.

NOVEMBER, 1907.

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